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Examining institutional responses to sexual misconduct: Higher education after #MeToo

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Abstract: Recent research (Bull and Rye, 2018; Shannon, 2020) has revealed that students and staff who report sexual misconduct to their institutions are often dissatisfied with the ways in which their reports are handled by institutions. Despite this scrutiny, complaints processes and their governance in UK higher education (HE) have received little critical attention (Bull and Page, 2021), not least the question of whether such a model of complaints handling is appropriate for addressing sexual misconduct, or other discrimination-related cases. In order to explore the possibilities and limitations of using existing complaints regimes to handle sexual misconduct complaints, this paper reports on the ongoing research project Higher Education After #MeToo, drawing on interviews with staff and student complainants of sexual misconduct, as well as with staff involved in handling complaints. Two significant gaps between these accounts are outlined: firstly, around remedies for sexual misconduct complaints; and secondly, around safeguarding processes.

Paper: Sexual misconduct in higher education is both a cause and a consequence of gender inequality as well as other inequalities (Australian Human Rights Commission, 2017; Cantor et al., 2015; National Union of Students, 2018). In the UK, non-statutory guidance from Universities UK's *Changing the Culture* on student-student sexual misconduct, harassment, and hate crime, was published five years ago. However, problems with complaints handling in this area continue to be reported on regularly (see for example Lee and West, 2019), and research (Bull and Rye, 2018; Shannon, 2020) has revealed that students and staff who report sexual misconduct to their institutions are often dissatisfied with the ways in which their reports are handled by institutions.

Despite this heightened attention, complaints processes and their governance in UK higher education (HE) have received little critical scrutiny (Bull and Page, 2021). Existing complaints structures were implemented as part of the increasing marketisation of UK HE, with many institutions lacking centralised complaints handling structures until the 2004 Higher Education Act made membership of the Office of the Independent Adjudicator for Higher Education mandatory for institutions in England and Wales. On the surface, therefore, it appears that marketization has led to a strengthened complaints regime for students, as also emphasised by the Competition and Markets Authority (2015). Nevertheless, a consumerist, individualised complaints model is now being adapted by institutions to handle student sexual misconduct complaints, as well as other discrimination-related complaints (EHRC, 2019). Despite this more robust governance regime, student complainants have been unable to obtain 'remedy' for complaints of sexual misconduct from staff as they cannot get to

the end of their institutional complaints process in order to access the services of the OIA (Bull and Page, 2021). This raises the question of whether such a model of complaints handling is appropriate for addressing sexual misconduct cases.

In order to explore the possibilities and limitations of using existing complaints regimes to handle sexual misconduct complaints, the research project Higher Education After #MeToo draws on interviews with staff and student complainants of sexual misconduct, as well as with staff involved in handling complaints. It explores to what extent existing HE complaints processes are adequate for addressing sexual misconduct; what complaints processes reveal about the gendered nature of higher education institutions; and how institutional power shapes complaint processes. This paper reports on the ongoing research project, offering interim analysis focusing on the gaps between the experiences of complainants and the accounts of staff handling complaints.

Two significant gaps in accounts are visible around remedies for sexual misconduct complaints; and around safeguarding processes. Discussion of remedies with staff handling complaints tended to focus on sanctions that were taken against the reported party; and to a lesser extent, safeguarding measures that had been implemented. However, this is at odds with the types of 'remedy' or justice that complainants were seeking, which was primarily protecting themselves and others, as well as being able to continue with their studies/careers (Bull, 2021). 'Remedy' therefore needs to involve steps taken by the institution to mitigate the impacts of the sexual misconduct, including academic remedies and 'transformative justice' measures (Vera-Grey and Fileborn, 2017), while offering a wider range of remedies for upheld complaints of sexual misconduct, and improving access to these remedies. Secondly, while a few institutions are still interpreting 'safeguarding' to refer only to under-18s (Phippen and Bond, 2020), the term is now being used more generally to think about sexual and gender-based violence more generally. However, staff handling complaints tended to think about safeguarding in individualised ways, in line with the way in which HE complaints mechanisms comprise an individualised process that assumes an individual victim and perpetrator. By contrast, complainants wanted to protect not only themselves but also others, requiring a wider, non-individualised understanding of safeguarding.

These differences point to ways in which individualised complaints handling mechanisms are not always adequate for discrimination-related complaints, or complaints where a risk to the wider student or staff body can be identified, as may be the case with sexual- and gender-based violence. In such cases, perpetration or discriminatory behaviour is carried out relating to membership of a group (for example, women, or people of colour) and therefore the risk to the wider staff/student body needs to be assessed as part of the reporting process. Such steps require an expanded understanding of HEIs' 'duty of care' towards students and staff, a concept that remains undefined in policy and practice, as well as greater transparency than HEIs have hitherto been willing to offer.

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